No. 62

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11, AFL-CIO, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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REPLY BRIEF OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, ET AL. AS AMICI CURIAE

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No. 422

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v.

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I. THIS COURT SHOULD DECIDE THE JURISDICTIONAL ISSUES WITHOUT REMANDING SUCH ISSUES TO THE NATIONAL LABOR RELATIONS BOARD

The *amici curiae* agree with the position asserted by petitioner in the first point of Reply Brief for Petitioner (pp. 1-3), namely, that this Court should here

and now decide the issue as to whether the Board properly dismissed the complaints against *amici curiae* as not within the appropriate jurisdiction of the Board. The *amici curiae,* as the successful parties in the proceedings before the Board, would be deprived of due process of law were this Court to adopt the Board's suggestion that the case should be remanded because the change in the membership of the Board might today result in a different decision than that reached by a majority of those who sat when the case was decided (Brief for the National Labor Relations Board, pp. 15-16). Due process requires that finality be accorded each decision of an administrative agency or a court unless there is no valid ground upon which the decision can be sustained. The possibility that due to a change in personnel an administrative agency would no longer reach the same decision cannot be legally relevant.

The Board's remand suggestion rests upon the erroneous assumption that then Chairman Farmer and then Board Member Peterson rested their decision exclusively on policy grounds. But as we set forth in our main brief (pp. 26-28) then Chairman Farmer and then Board Member Peterson agreed with Board Member Murdock that Congress did not intend for the Board to assert jurisdiction in this situation. This determination was not one of administrative policy or discretion. It was a determination of statutory construction, the validity of which is for ultimate decision by this Court, not by any administrative officials.

Moreover, even a decision of an administrative agency on policy grounds should be reviewed and enforced or set aside by courts, soley on the basis of whether the decision was a legally permissible one.

If changes in personnel of administrative agencies could occasion remands of cases decided by those no longer in office, the whole statutory scheme of administrative agencies would soon become unworkable because no finality could inhere in any policy decision.

II. THE BOARD'S ANALYSIS OF THE LEGISLATIVE HISTORY OF SECTION 2(2) OF THE ACT IS MISLEADING

At page 21 of the Board's Brief an attempt is made to give the impression that the Senate Committee Report on the bill which became the original National Labor Relations Act did not characterize the instance of a union acting as an employer of employees as an "extreme case," but rather used the term "extreme" because "except in rare instances, a union's organizational attempts are addressed to employees of other employers, not to their own employees." The language of the Senate Report read literally however uses the word "extreme" to refer to the instances of a union being an employer, not to the instances of union organizational activity among employees of the union. Thus the pertinent language reads (Senate Report No. 573, 74th Cong., 1st Sess., May 2, 1935, accompanying S. 1958, reprinted 2 Leg. His. N.L.R.A., 1935, p. 2305):

> "The term 'employer' excludes labor organizations, their officers, and agents (except in the extreme case when they are acting as employers in relation to their own employees)."

We likewise disagree with the Board's assertion (Brief, p. 21, n. 15) that "Nothing in the legislative history of the 1947 amendments to the Act casts any doubt" upon the construction which the Board's brief places on Section 2(2) of the Act. The excerpts from

the legislative history of the 1947 amendments to the Act, which are set forth and cited in our main brief (pp. 71-72) contain repeated statements that management must be accorded the same freedom to choose its labor relations personnel, whether supervisory or clerical, as labor unions already had. The amendment exempting supervisors from the Act was expressly rested on this ground. Congress thereby manifested its understanding that labor unions in the hiring of their usual office staff were not subject to the inhibitions of Section 8(a) of the Act.

CONCLUSION

For the foregoing reasons it is urged that this Court should affirm the judgment below and sustain the order of the Board dismissing all complaints against the *amici curiae*.

Respectfully submitted,

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